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POLICY ON THE COLLECTION OF OVERDUE AND LATE TOXICS USE REDUCTION ACT (TURA) FEES AND THE ENFORCEMENT OF TURA REPORTING AND PLANNING REQUIREMENTS

Bureau of Air and Waste
Policy # BAW 2017-001
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(Previously known as ENF-07-002, previously reissued 6/2/2015)

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DISCLAIMER

This policy is for informational purposes only and does not create any legal rights or substitute for the TURA statute and regulations. Please refer to the full text of the TURA statute, M.G.L. Chapter 21I, Sections 1-23, and the regulations promulgated thereunder at 310 C.M.R. 50.00 and 301 C.M.R. 40.00.

I. PURPOSE AND BACKGROUND

This document describes the Department of Environmental Protection's (the Department's) policy on assessing late fees and enforcing reporting and planning requirements under the Toxics Use Reduction Act (TURA), M.G.L. Chapter 21I, Sections 1-23.

Section 19(F) of TURA provides for the assessment and collection of administrative fees for late reports and toxics use fees and for reports and toxics use fees that are not submitted at all. For example, a toxics user that submits to the Department a toxics use fee 90 days after it is due is assessed, in addition to the overdue toxics use fee, an administrative fee of \$1000. This administrative fee provision encourages timely reporting and payment of toxics use fees, thereby ensuring accuracy in the information provided to the public in the Department's annual report on toxics use reduction within the Commonwealth. Administrative fees are assessed according to the schedule described in M.G.L. Chapter 21I, Section 19(F), and are not considered administrative penalties.

In addition to the assessment and collection of administrative fees for untimely toxics use fee payments and late reports, the Department also may assess administrative penalties pursuant to M.G.L. c. 21A, §16, M.G.L. 21I, 310 CMR 5.00 and 310 C.M.R. 50.00 for the untimely, deficient, or incomplete submission of a toxics use report and for failure to prepare a toxics use reduction plan or plan update and to submit a plan summary to the Department.

The Department has established this policy to clarify its pursuit of late or incomplete toxics use reports, overdue toxics use fees, administrative fees, and planning documents. The Department believes that this policy will ensure consistency across regional offices, and will provide fair and equitable treatment to the regulated community. The Department also believes that clarifying its collection and enforcement activities will encourage self-reporting of noncompliance while providing the most relevant chemical use data and deterring late or incomplete toxics use reporting and planning.

II. APPLICABILITY AND EFFECT

This policy applies to all administrative enforcement actions against facilities required under M.G.L. Chapter 21I to report toxics use to the Department.

This policy applies to all such actions commenced after the effective date of the policy, and to all pending cases in which the Department has not reached an agreement in principle with the regulated entity.

This policy supplements the Department's Enforcement Response Guidance (ERG), and should be read in conjunction with it. The principles, policies, and procedures contained in the ERG apply to all facilities required under M.G.L. Chapter 21I to report to the Department unless otherwise provided below.

This policy does not apply to settlements or consent orders, for violations of consent orders or other settlement agreement requirements.

III. POLICY STATEMENT

1. In the case of toxics users out of compliance with reporting requirements for past years, the Department will take enforcement action to collect the overdue reports, and associated toxics use fees and administrative fees for each past year up to a maximum of four (4) prior reporting years. Administrative fees for overdue reports from the past four (4) years will be \$1000 per year since these fees are more than 30 days past due. The Department also may assess an administrative penalty in accordance with the ERG.

Enforcement Response Revision (effective, 2016): This enforcement response only applies to those toxics users that do not have an enforcement history:

- Toxics users that do not self-disclose noncompliance and whose noncompliance was discovered by MassDEP, will receive a NON and will be required to submit all outstanding reports for the prior four (4) reporting years and to pay toxics use fees and the administrative late fee associated with all outstanding reports for the prior four (4) years. This enforcement response shall not apply if the facility has a pattern of noncompliance or the violation was "willful;" instead, MassDEP would pursue appropriate higher level enforcement under the ERG.
- Toxics users that have reported under TURA previously and self-disclose noncompliance will receive a NON and will be required to submit all outstanding reports for the prior two (2) reporting years and to pay toxics use fees and the administrative late fee

associated with all outstanding reports for the prior two (2) years. This enforcement response shall not apply if the facility has a pattern of noncompliance or the violation was “willful;” instead, MassDEP would pursue appropriate higher level enforcement under the ERG.

- For toxics users that have never reported under TURA:
 - If the toxics user notifies the Department within 45 days of self-discovery of the violation(s), the toxics user will receive a Warning Letter and will be required to submit all outstanding reports for the prior reporting year and to pay toxics use fees and the administrative late fee associated with all outstanding reports for the prior one (1) year.
 - If the toxics user notifies the Department more than 45 days after self discovery of the violation(s), the toxics user will receive a NON and will be required to submit all outstanding reports for the prior two (2) reporting years and to pay toxics use fees and the administrative late fee associated with all outstanding reports for the prior two (2) years.
- 2. The Department requires facilities to prepare toxics use reduction plans or plan updates by July 1st in even-numbered years only. Plan summaries for each reported chemical are due to the Department by July 1st in every even-numbered year that follows the first calendar year on which the facility submitted a report on the chemical (regardless of the year in which the first report was due). If a toxics user fails to complete a toxics use reduction plan or toxics use reduction plan update, or fails to file a toxics use reduction plan summary with the Department by July 1st of an applicable even-numbered year, the Department will take enforcement action to require the facility to prepare any supporting materials and file the overdue plan summary within a reasonable timeframe from the time of discovery. The Department also may assess an administrative penalty in accordance with the ERG.

IV. TEMPORARY AMNESTY

Please note that there was a temporary amnesty in effect from April 9, 2015 through June 30, 2016 for facilities that voluntarily disclosed past failures to file one or more Annual Chemical Use Reports (Form S’s) during that time period. This Temporary Amnesty has now concluded.

For more information: <http://www.mass.gov/eea/agencies/massdep/toxics/tur/amnesty.html>